

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

FILED

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CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 5:04-CV-01419-JRA

JAMES L. BINGE, Individually and d/b/a  
Accounting & Financial Services; and  
TERRENCE A. BENTIVEGNA, individually  
and d/b/a T.J. Enterprises,

Defendants.

**ORDER GRANTING PRELIMINARY INJUNCTION**

This is a civil action in which the United States seeks an injunction prohibiting the defendants, James L. Binge, individually and doing business as Accounting & Financial Services, and Terrence A. Bentivegna, individually and doing business as T.J. Enterprises, from: (1) organizing, promoting and selling abusive tax shelters under section 7408 of the Internal Revenue Code (26 U.S.C.) ("IRC"); and (2) acting as federal income tax return preparers under IRC § 7407.

Pursuant to the notice dated September 7, 2004, oral argument on the Government's motion for a preliminary injunction was heard on September 22, 2004. The United States was represented by trial attorney Robert D. Metcalfe of the Tax Division of the U.S. Department of Justice. Defendants appeared at the hearing without counsel. In accordance with Fed.R.Civ.P. 65(d), the findings of fact and reasons for the entry of a preliminary injunction are set forth below.

### **Standards for Preliminary Injunction**

In order to obtain a preliminary injunction, the United States must show that (1) under IRC § 7407 (“Action to Enjoin Income Tax Return Preparers”), defendants either engaged in conduct subject to penalty under IRC §§ 6694 or 6695, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administrative of the internal revenue laws; or (2) under IRC § 7408 (“Action to Enjoin Promoters of Abusive Tax Shelters, Etc.”), defendants engaged in conduct subject to penalty under IRC §§ 6700 or 6701; and (3) injunctive relief is appropriate to prevent the recurrence of such conduct.

Because the Government has established that defendants have committed statutory violations, it need not demonstrate the traditional equitable factors in order for the preliminary injunction to issue in this case. Nevertheless, the United States has also established that the following four factors weigh in favor of granting a preliminary injunction against defendants: (1) there is a likelihood of irreparable injury to the United States as a result of the conduct complained of; (2) there is little or no likelihood of harm to defendants if a preliminary injunction is granted; (3) there is a likelihood that the United States will prevail on the merits; and (4) an injunction will serve the public interest.

### **Findings of Fact**

Based on the evidence and the parties’ arguments, the Court finds as follows:

1. The defendants, James L. Binge (“Binge”) and Terrence A. Bentivegna (“Bentivegna”) were properly served with process and copies of the United States’ Motion for Preliminary Injunction on July 26, 2004.

2. Binge and Bentivegna each filed substantially identical responses to the complaint that included copies of the United States' Motion for Preliminary Injunction and moving papers. Stamped across the face of the Government's documents was the meaningless phrase "Accepted for Assessed Value and Returned in Exchange for Closure and Settlement of the Accounting."

3. Binge promotes an abusive trust scheme known as the "Common Law Business Organization" ("CLBO") which is a "plan or arrangement" within the meaning of IRC § 6700(a)(1)(A). The CLBO is described in a promotional brochure that is attached to the Declaration of Revenue Agent Denise Gill as Exhibit 18.

4. Binge's promotional materials contain step-by-step instructions for creating multiple trusts such as an "asset management trust" and a "business trust." In other cases, customers who purchased the Common Law Business Organization from Binge also created an "international trust" and a "global trust."

5. Binge's promotional materials states that the CLBO "will be free from government restraints and will escape probate, gift taxes, inheritance taxes, estate taxes, and capital gains taxes; it will lower or eliminate income taxes; protect assets from litigation claims; and be free of reliance on statutory or equity law."

6. Customers who purchase Binge's CLBO purportedly transfer their major assets to their "Asset Management Company," which is actually a sham trust. Binge prepares tax returns for his customers that improperly claim tax deductions for the spurious "asset management fees" that his customers supposedly pay to their own Asset Management Companies.

7. The customer's Asset Management Company then reduces or eliminates the tax it would otherwise pay on the management fees that it receives by filing a Form 1041 income tax

return that claims tax deductions for the customer's personal, non-deductible living expenses.

8. Any remaining funds in the customer's Asset Management Company are transferred to (1) another trust located in a foreign country (typically Belize); or (2) a charitable trust controlled by the customers who purchased the CLBO from Binge.

9. According to IRS records, Binge has prepared at least 420 Form 1041 income tax returns for trusts since 1997. Using an average income adjustment of \$150,000 per return, Revenue Agent David Hicks has estimated in his Declaration that the aggregate revenue loss to the Government from Binge's abusive trust scheme is \$18.9 million.

10. Bentivegna assists in organizing and promoting Binge's abusive trust scheme by acting as the trustee for a number of Binge's abusive trusts. By signing trust tax returns and other trust documents as the trustee of the trust, Bentivegna disguises the identity of the underlying trust purchaser from the IRS. For example, through a Quit-Claim Deed dated July 17, 2003, a customer, Garry L. Oakes, transferred his interest in real property located in Stark County, Ohio, to Bentivegna as Trustee of the Oakes Management Trust. This hindered the IRS from seizing Oakes' real property in satisfaction of his unpaid federal income tax liabilities.

11. The Form 1040 income tax returns that Binge prepared for his customers, and the Form 1041 income tax returns that he prepares for his customers' Asset Management Companies, are based on unrealistic positions within the meaning of IRC § 6694..

12. First, a taxpayer cannot assign his or her income to another entity to avoid the taxation of that income. Second, an entity such as Binge's CLBO cannot claim tax deductions on its own tax return for "Asset Management Fees" or for the trust purchaser's personal, non-deductible living expenses.

13. The unrealistic positions taken by Binge on the tax returns that he prepared for his customers and their trusts resulted in gross understatements of his customer's tax liabilities.

14. Because of those unrealistic positions, the IRS was required to undertake the administratively burdensome tasks of (1) examining the tax returns that Binge prepared; (2) determining the correct federal income tax liabilities of his customers; and (3) making assessments against his customers for unpaid federal income taxes.

15. According to a list compiled by IRS Revenue Agent Kathy Lindamood, who audited approximately 187 income tax returns that Binge prepared, the tax assessments made against his customers for additional federal income taxes ranged from \$412,040 to \$560.

16. In addition to the trust scheme discussed above. Bentivegna and Binge also promote the "IRC § 861 Argument," which falsely asserts that U.S. residents' domestic income is not taxable.

17. In preparing their clients' federal income tax returns, Binge and Bentivegna incorrectly interpret IRC § 861 to mean that if none of their customers has any foreign income, *i.e.*, income from sources outside the United States, then the income reported on their customers' federal income tax returns must be reduced.

18. Binge and Bentivegna use the IRC § 861 argument in different ways to understate their clients' federal income tax liabilities. Binge prepares a U.S. Individual Income Tax Return (Form 1040) that reduces all items to zero and requests a full refund for all amounts of taxes paid or withheld. In the space following line 33A on the Form 1040, Binge enters an amount with a brief comment stating "per 1.861-8."

19. Bentivegna adds a detailed explanation to income tax returns he prepares for customers, stating that reported income is being reduced because the previously reported income was not foreign-sourced and therefore was not includible in the customer's taxable income. The statements also contains the following language: "Do not notify us that the I.R.S. is 'changing' my return, since there is no statute, code or implementing regulation that would authorize the I.R.S., or any other government employee, to do that. That would constitute 'Theft by Conversion' a felony. Section 1203 will be filed immediately."

20. The returns prepared by defendants that used the IRC § 861 argument to improperly understate their customers' federal income tax liabilities are based on unrealistic positions within the meaning of IRC § 6694.

21. Defendants knew or should have known that their representations regarding their trust scheme and the IRC § 861 argument (and the tax benefits to be derived from participating in these schemes) were false because (1) the trust scheme (the CLBO) and the IRC § 861 argument are frivolous on their face; (2) there are numerous judicial decisions rejecting the IRC § 861 argument and similar sham trust schemes; (3) the IRS has repeatedly issued public notices explaining the invalidity of both schemes; and (4) both Binge (a former licensed public accountant) and Bentivegna (who took college-level courses in accounting) had extensive backgrounds in and experience with federal tax issues.

22. Defendants' misrepresentations were material within the meaning of IRC § 6700 because their customers would not have purchased the CLBO or allowed their tax returns to be prepared using the IRC § 861 Argument had they known of the falsity of the defendants' representations.

23. Absent this preliminary injunction, defendants will continue to promote abusive tax schemes.

24. Unless this preliminary injunction is granted, the United States will suffer irreparable harm because defendants will continue to advise and assist their clients to file erroneous tax returns that substantially underreport their correct federal tax liabilities. Further, considerable Government resources have been spent examining and dealing with the returns prepared by Binge and Bentivegna. This injunction will prevent the expenditure of some of those resources, and the recurrence of defendants' unlawful activities.

25. The Form 1040 and 1041 income tax returns prepared and filed by Binge and Bentivegna relate to a material matter that they knew would result in the understatement of their customers' tax liabilities. Defendants' preparation of those tax returns and other legally frivolous documents that were subsequently submitted to the IRS has substantially interfered with the administration of the internal revenue laws.

26. Bentivegna has substantially interfered with the administration of the internal revenue laws by advising his clients to challenge the withholding of federal income and social security taxes from their wages or salaries, and by acting as a trustee of trusts created by Binge in order to conceal the identities of trust purchasers from the Internal Revenue Service.

27. Bentivegna has refused to provide the IRS with a list of his clients or copies of the returns that he prepared, as he was legally required to do under IRC § 6107(b).

28. This injunction is tailored to prevent defendants from causing further injury and from further violating the law. Thus, the threatened injury to the United States outweighs any injury an injunction might cause to defendants.

29. The public is served by granting this injunction. This preliminary injunction will help stem the spread of, and protect the public from, defendants' abusive trust scheme and frivolous IRC § 861 argument.

To the extent that any of the factual findings above can also be construed as legal conclusions, the factual findings shall also serve as conclusions of law.

### **Conclusions of Law**

30. Based on the evidence presented by the United States and defendants, the Court finds that defendants James L. Binge and Terrence A. Bentivegna, individually and doing business as Accounting & Financial Services and T.J. Enterprises, respectively, have repeatedly engaged in conduct subject to penalty under IRC §§ 6700 and 6701 by organizing, promoting and selling their abusive trust scheme and the IRC § 861 argument.

31. Accordingly, the court finds that defendants should be preliminarily enjoined under IRC § 7408 from promoting their abusive tax schemes.

32. Defendants have engaged in conduct subject to penalty under IRC §§ 6694 by preparing federal income tax returns that contain unrealistic positions and substantially understate the federal income tax liabilities of their customers.

33. Defendants have also engaged in fraudulent and deceptive conduct which substantially interferes with the proper administration of the internal revenue laws.

34. Defendant Bentivegna has engaged in conduct subject to penalty under IRC § 6695 by refusing to provide a list of clients for whom he prepared tax returns, or copies of those returns, in response to the IRS written request made in November of 2003.



35. Accordingly, the Court finds that defendants should be preliminarily enjoined under IRC § 7407 from acting as federal income tax return preparers.

36 The Court finds that the United States has presented persuasive evidence that the United States and the public will suffer irreparable harm in the absence of this preliminary injunction and that defendants will suffer little, if any, harm if the preliminary injunction is granted.

37. The United States also has presented evidence and argument sufficient to convince the Court that the United States has a high likelihood of success on the merits and that defendants' positions are frivolous.

38. Further, the United States has presented credible evidence and argument that shows the public interest will be served through granting this preliminary injunction.

39. Finally, the evidence presented shows that absent this injunction, defendants will continue to violate IRC §§ 6694, 6695, 6700 and 6701. Accordingly, the Court finds that defendants should also be preliminarily enjoined under IRC § 7402.

### **ORDER**

Based on the foregoing factual findings and for good cause shown, the Court ORDERS that defendant James L. Binge, individually and doing business as Accounting & Financial Services, and defendant Terrence A. Bentivegna, individually and doing business as T.J. Enterprises, and their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order are enjoined from:

A. Under IRC §§ 7408 (“Action to Enjoin Promoters of Abusive Tax Shelters, Etc.”) and 7402

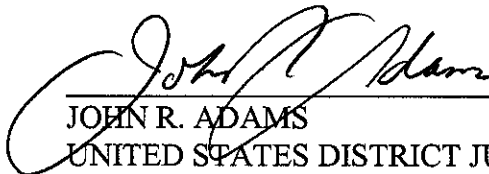
1. Engaging in activity subject to penalty under IRC § 6700, including organizing and/or selling a plan or arrangement (including, without limitation, their fraudulent trust scheme and IRC § 861 argument) and making a statement regarding the excludability of income that they know or have reason to know is false or fraudulent as to any material matter;
2. Advocating, through seminars, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that trusts will substantially reduce or eliminate federal income and estate taxes;
3. Selling any type of trust or similar arrangement that advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the ownership or receipt of income;
4. Engaging in any other activity subject to penalty under IRC §§ 6694, 6695 or 6700;
5. Engaging in activity subject to penalty under IRC § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will result in an understatement of tax liability;
6. Preparing or assisting in the preparation of any tax-related document to be sent to any other person or entity, including an employer, on behalf of any other person in exchange for payment (including for those who paid for any other tax-related services); and
7. Acting as a trustee, fiduciary, or in any other representative capacity for any trust or any other entity; and
8. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

B. Under IRC §§ 7407 (“Action to Enjoin Income Tax Return Preparers”) and 7402

1. Preparing or assisting in the preparation of federal tax returns for any other person or entity;

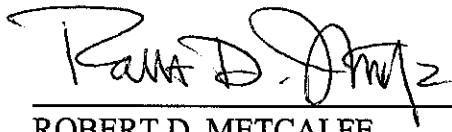
2. Representing, offering to represent, or claiming an ability to represent any other person in any tax matter before the Internal Revenue Service or any court;
  3. Corresponding with, or assisting in the preparation of any correspondence or other documents to be sent to, the Internal Revenue Service on behalf of any other person in exchange for payment (including for those who paid for any other tax-related services);
- C. Further, the Court ORDERS that the defendants provide their complete client lists from January 1, 1995 through the present, including names, addresses, phone numbers, e-mail addresses, and social security numbers or employer identification numbers, to counsel for the United States within ten days of the date of this Order. Defendants must each individually file a sworn certificate of compliance, each swearing that he or she has complied with this portion of the Order, within ten days of the date of this Order.
- D. Further, the Court ORDERS that defendants provide a copy of this preliminary injunction to all of their clients, by First Class Mail, within ten days of the date of this Order. Defendants will bear the costs of providing the copy of the preliminary injunction to their clients. Defendants must each individually file a sworn certificate of compliance, each swearing that he or she has complied with this portion of the Order, within ten days of the date of this Order.

SO ORDERED this 27th day of September, 2004.

  
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JOHN R. ADAMS  
UNITED STATES DISTRICT JUDGE

Prepared by:

GREGORY A. WHITE  
United States Attorney

A handwritten signature in black ink, appearing to read "Robert D. Metcalfe", is written over a horizontal line.

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